

AO 120 (Rev. 3/04)

TO: <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Florida Middle - Orlando on the following  Patents or  Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
6:08-CV-1525-Orl-18-KRS	9/4/08	Florida Middle, Orlando Division
PLAINTIFF		DEFENDANT
Nike, Inc.		Synamon Pennington
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 Please see attached.		
2 1,214,930		
3 1,323,343		
4 1,325,938		
5 1,284,386		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,370,283		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK <b>SHERYL L. LOESCH</b>	(BY) DEPUTY CLERK <i>[Signature]</i>	DATE 9.5.2008
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

Case No.: 08-CV-1525-ORL-18-KRS

NIKE, INC.,

Plaintiff,

v.

Synamon Pennington d/b a  
ELS Clothing d/b/a  
www.Playamadegear.com

Defendants.

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COMPLAINT

Plaintiff, Nike, Inc. ("Nike"), by and through its undersigned attorneys, allege for its Complaint as follows:

INTRODUCTION

1. Nike files this action against the Defendant, who has unlawfully engaged in the importation, duplication, distribution, sale, and offer for sale of counterfeit shoes bearing exact copies or colorable duplications of Nike's trademarked properties.

2. For violations of the Federal Statutes alleged in the Complaint, Nike seeks a Preliminary and Permanent Injunction, damages, costs, and attorneys' fees as authorized by the Lanham Act.

### JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to the federal trademark laws (the "Lanham Act"), 15 U.S.C. §§ 1051-1141. Further, this Court has jurisdiction over Nike's pendent and common law claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b).

### THE PARTIES

5. Plaintiff Nike, Inc. is a corporation duly organized and existing under the laws of the State of Oregon, having its principal place of business in Beaverton, Oregon.

a. Nike is engaged in the manufacture, design, and sale of footwear, apparel, and related accessories. Among other products, Nike manufactures, sells, and distributes basketball and running shoes. Products manufactured and sold by Nike are sold bearing several marks including the "NIKE" mark, an arbitrary and distinctive emblem which has come to be known as the "Swoosh Design," a composite mark consisting of the word "Nike" and the "Swoosh Design", or an arbitrary and distinctive emblem which has come to be known as "Jumpman". Nike uses these marks on shoes and apparel as trademarks of Nike's high-quality products. Nike also developed and used the "Nike Air" and "Just Do It" marks as trademarks for its shoes and apparel. Nike sells in excess of \$13,000,000,000.00 per year in merchandise bearing its distinctive trademarks.

b. All products noted above are sold with the "NIKE", "Swoosh Design", or composite "NIKE" and "Swoosh Design" marks. Nike adopted and used the "NIKE" and "Swoosh Design" marks in 1971. Some, but not all, of Nike's registered marks and registration numbers are noted below:

- i. Nike registered the "NIKE" mark in block letters on November 2, 1982; Registration No. 1,214,930 in class 25 for footwear.
- ii. Nike registered the "Swoosh Design" on March 5, 1985; Registration No. 1,323,343 in class 25 for footwear.
- iii. Nike registered the composite mark of "NIKE" and the "Swoosh Design" on March 19, 1985; Registration No. 1,325,938 in class 25 for footwear.
- iv. Nike registered the "NIKE AIR" mark on July 3, 1984; Registration No. 1,284,386 in class 25 for footwear.
- v. Nike registered the "AIR JORDAN" mark on November 12, 1985; Registration No. 1,370,283 for footwear and apparel in class 25.
- vi. Nike registered the "AIR JORDAN" design on December 22, 1992 for apparel and sports bags in class 18 and apparel and backpacks in class 25.
- vii. Nike registered the "AIR JORDAN" design on September 16, 1989 for footwear and apparel in class 25.
- viii. Nike registered the "JUST DO IT" mark on January 24, 1995 for apparel in class 25.

Nike's trademarks will hereinafter be collectively referred to as the "Nike Trademarks". These marks are indexed on Exhibit "A".

6. Defendant, Synamon Pennington d/b/a ELS Clothing d/b/a [www.Playamadegear.com](http://www.Playamadegear.com) is an individual doing business in the State of Texas at 20702 Hardwick Oaks Drive, Houston, Texas 77070 under the names ELS Clothing and [www.Playamadegear.com](http://www.Playamadegear.com) (hereinafter collectively referred to as "Defendant" and "Pennington") Upon information and belief, Synamon Pennington operates interactive Web site at the Uniform Resource Locator ("URL") <<http://www.Playamadegear.com>> that sells, offers for sale, and distributes merchandise in this District.

#### FACTUAL BACKGROUND

7. Nike has used the Nike Trademarks continuously from the date claimed on the registrations in connection with the goods and services noted. The Nike Trademarks are in full force and effect, are owned by Nike, and many have become incontestable pursuant to 15 U.S.C. § 1065. Each of the distinctive trademarks signifies to the purchaser that the product originates exclusively with Nike and is manufactured to standards of the highest quality. Whether Nike manufactures the product itself or licenses others to do it, Nike has ensured that products bearing its trademarks are manufactured to the highest standards. As a result, Nike has established further goodwill in the Nike Trademarks, which have become valuable assets of Nike.

8. Because of Nike's longstanding use and large advertising expenditures in support of its marks, the Nike Trademarks have become famous marks as defined by 15 U.S.C. § 1125(c)(1).

9. The enormous popularity of Nike's products is not without costs as evidenced by the increasing number of counterfeiters in the United States and worldwide.

10. Pennington is importing, distributing, offering for sale, and/or selling counterfeit shoes bearing exact copies or colorable imitations of the Nike Trademarks. See Exhibits "B" and "B-1". Nike has never authorized Pennington to reproduce, import, copy, or sell shoes or any product bearing the Nike Trademarks. The counterfeit shoes sold or offered for sale by Pennington are referred to in this complaint as the "Counterfeit Products". Pennington has distributed, offered for sale, or sold the Counterfeit Products through the Web site located at the URL <<http://www.Playamadegear.com>>.

11. Nike has requested that Pennington cease and desist from her infringing activities. Despite these repeated requests, Pennington continues to sell and offer for sale of the Counterfeit Products. Pennington performed the complained of acts willfully and with knowledge of the infringement and unfair competition they would cause and to appropriate and unfairly trade upon Nike's goodwill in the Nike Trademarks.

COUNT I  
Trademark Infringement and Counterfeiting

12. Nike incorporates by reference paragraphs 1 through 11 and brings the following claims for trademark infringement pursuant to 15 U.S.C. § 1114 against the Defendants.

13. Nike owns the exclusive trademark rights to those trademarks indexed on Exhibit "A". All of the trademark registrations are in full force and effect and are owned by Nike. In many cases the trademarks have become incontestable pursuant to 15 U.S.C. § 1065.

14. Nike, or those under its authority, manufacture and distribute all of its products and advertising in conformity with the provisions of the Lanham Act.

15. Notwithstanding Nike's well-known and prior common law and statutory rights in its trademarks, Pennington has adopted and used the Nike Trademarks in the State of Florida and interstate commerce. Pennington committed these acts with actual notice of Nike's federal registration rights; long after Nike established its rights in the trademarks.

16. Pennington committed her acts of infringement within the jurisdiction of this Court. Pennington has sold or offered for sale Counterfeit Product in the Middle District of Florida and interstate commerce, thus creating the likelihood of confusion, deception, and mistake.

17. Pennington imported, distributed, sold, or offered for sale Counterfeit Products bearing Nike's distinctive trademarks. Pennington acted

with actual and constructive knowledge of Nike's distinctive trademarks and has contributed to the infringing, copying, duplication, sale, and offer for sale of Counterfeit Product.

18. Pennington's acts of infringement will cause irreparable injury to Nike if Pennington is not restrained by the Court from further violation of Nike's rights as Nike has no adequate remedy at law.

19. Nike has suffered damages as a result of Pennington's acts.

20. Pennington's commercial use of the Nike Trademarks in conjunction with the sale of shoes is an infringement of Nike's registered trademarks and in violation of 15 U.S.C. § 1114.

21. Upon information and belief, Pennington committed the alleged acts intentionally, fraudulently, maliciously, willfully, wantonly, and oppressively with the intent to injure Nike and its business.

## COUNT II

### False Designation of Origin and False Description

22. Nike incorporates by reference the allegations set forth in paragraphs 1 through 11 and 13 through 21.

23. The Nike Trademarks have acquired a secondary and distinctive meaning such that the public has come to identify the trademarked properties listed on Exhibit "A" with Nike.

24. The unauthorized manufacture of shoes and related merchandise that has been distributed and sold by the Defendant exactly duplicates and appropriates the likeness of the Nike Trademarks, the effect of which is to delude

and confuse the public into believing that the shoes have been authorized or sponsored by Nike.

25. The sale of unauthorized products bearing the Nike Trademarks will dilute the goodwill and reputation of Nike.

26. The sale of unauthorized products bearing the Nike Trademarks, which are of an inferior quality to the authorized and authentic product, will further dilute the goodwill and reputation of Nike.

27. Pennington, by misappropriating and using the likeness of the Nike Trademarks and licensed trademarks in connection with the sale of Counterfeit Products, is misrepresenting and will continue to misrepresent and falsely describe to the general public the origin and sponsorship of his products. Pennington has caused such products to enter into interstate commerce with full knowledge of the falsity of the designation of their origin, description, and representation in an effort to mislead the purchasing public into believing that their products are authorized or emanate from Nike.

28. These acts constitute a violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

29. The continued use of the likenesses of the Nike Trademarks and licensed trademarks by Pennington has caused, and unless restrained will continue to cause, serious irreparable injury and harm to Nike as Nike has no adequate remedy at law.

30. Pennington has obtained gains, profits, and advantages as a result of his unlawful acts.

31. Nike has suffered monetary damages as a result of Pennington's acts.

**COUNT III**  
**Unfair Competition under Florida's Common Law**

32. Nike incorporates by reference the allegations set forth in paragraphs 1 through 11, 13 through 21, and 23 through 31.

33. Nike has spent significant sums of money advertising and marketing products and services featuring its trademarked properties, creating a consumer demand for such products and services throughout the United States. Consequently, these products and services have become widely known and accepted.

34. Pennington is using the Nike Trademarks in conjunction with the advertising, marketing, and offering for sale of the Counterfeit Products, thereby passing it off as goods authorized or distributed by Nike.

35. Pennington knowingly and willfully appropriated Nike's trademarked properties in an effort to create the impression that Nike sanctioned her Counterfeit Products in order to misappropriate all of the goodwill associated with Nike's trademarked properties.

36. Pennington's acts constitute unfair competition and, unless enjoined by this Court, will result in the destruction or dilution of the goodwill of Nike's valuable property rights to the unjust enrichment of Pennington.

37. The Counterfeit Products advertised, marketed, and offered for sale by Pennington in conjunction with Nike's trademarked properties are calculated and likely to deceive and mislead the purchasers who buy them in the belief that they originate with or are authorized by Nike.

38. Pennington's continued passing off of such Counterfeit Products as if such goods originated with or were authorized by Nike has caused and, unless restrained, will continue to cause serious and irreparable injury to Nike.

39. Nike has no adequate remedy at law and is suffering irreparable harm as a result of the actions by Pennington.

40. Pennington committed the acts alleged in this complaint intentionally, fraudulently, maliciously, willfully, wantonly, and oppressively with the intent to injure Nike and its business.

#### PRAYER FOR RELIEF

WHEREFORE Nike demands interim relief in the form of a Preliminary Injunction and, consistent with that, entry of a judgment against Pennington as follows:

1. Permanent injunctive relief restraining Pennington, her officers, agents, servants, employees, attorneys, and all those in active concert or participation with them from:

a. further infringing each of the Nike Trademarks by manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, displaying, or otherwise disposing of any

products not authorized by Nike bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of the Nike Trademarks ("Unauthorized Products");

b. using any simulation, reproductions, counterfeit, copy, or colorable imitation of any of the Nike Trademarks in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation, or distribution of Unauthorized Products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to Nike, or to any goods sold, manufactured, sponsored, or approved by, or connected with, Nike;

c. making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any products manufactured, distributed, or sold by Pennington are in any manner associated or connected with Nike, or are sold, manufactured, licensed, sponsored, approved, or authorized by Nike;

d. engaging in any other activity constituting unfair competition with Nike, or constituting an infringement of any of the Nike Trademarks or of Nike's rights in, or to use or to exploit, the Nike Trademarks, or constituting any dilution of Nike's name, reputation, or goodwill;

e. effecting assignments or transfers, forming new entities or associations or using any other device for the purpose of circumventing or otherwise avoiding the prohibits set forth in subparagraphs a-d; and

f. secreting, destroying, altering, removing, or otherwise dealing with the Counterfeit Products or any books or records that may contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, or displaying of all unauthorized products which infringe any of the Nike Trademarks.

2. Directing that Pennington deliver for destruction all Unauthorized Products including shoes and any other merchandise, labels, signs, prints, packages, dyes, wrappers, receptacles, silk screens, heat transfers, embroidery templates, software, and advertisements relating thereto in its possession or under its control bearing any of the Nike Trademarks or any simulation, reproduction, counterfeit, copy, or colorable imitations thereof, and all plates, molds, heat transfers, screens, matrices, software, and other means of making the same.

3. Directing that Pennington delete any and all digital files used to reproduce the Nike Trademarks from any and all computers, CDs, DVDs, hard drives, floppy disks, or other form of digital file storage, which is in Pennington's possession or control.

4. Directing that Pennington remove all Web sites bearing any of the Nike Trademarks or advertising the Unauthorized Products from any and all computers, CDs, DVDs, hard drives, floppy disks, or other form of digital storage format which is in Pennington's possession or control.

5. Directing that Pennington report to this Court within 30 days after a Permanent Injunction is entered to show her compliance with paragraphs 2-4 above.

6. Directing such other relief as the Court may deem appropriate to prevent the trade and public from gaining the erroneous impression that any products sold, or otherwise circulated or promoted by Pennington are authorized by Nike or related in any way to Nike's products.

7. That Nike be awarded three times Pennington's profits after an accounting pursuant to 15 U.S.C. § 1114 and § 1117 or, at the election of Nike, statutory damages as provided by § 1117(c) of between \$500.00 and \$100,000.00 per trademark per type of good sold that is counterfeited by Pennington or, should this Court find that Pennington willfully used a counterfeit mark, statutory damages of not more than \$1,000,000.00 per trademark per type of good sold.

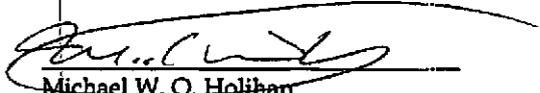
8. That Nike be awarded its reasonable attorneys' fees and investigative fees pursuant to 15 U.S.C. § 1117.

9. That Nike be awarded their costs in bringing this action.

10. That Nike have such other and further relief that this Court deems just.

Dated this 3rd day of September 2008.

Respectfully submitted,



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